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SENATE BILL 918

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

TIMOTHY Z. JENNINGS

AN ACT

RELATING TO HEALTH; ENACTING THE COUNTY HEALTH COMMISSION ACT;
ENACTING A NEW SECTION OF THE HOSPITAL FUNDING ACT; AMENDING
CERTAIN SECTIONS OF THE NMSA 1978 PERTAINING TO OPEN MEETINGS,
PROCUREMENT AND PUBLIC RECORDS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1
through 7 of this act may be cited as the "County Health
Commission Act".

Section 2. [NEW MATERIAL] PURPOSE. --The purpose of the
County Health Commission Act is to permit the transfer of
ownership of a county hospital to a county health commission,
thereby enhancing the ability of the hospital to compete in the
competitive and rapidly changing health care marketplace, while
ensuring that the hospital maintains its primary purpose of

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1 providing health care for the benefit of the citizens of the
2 county through the requirement of a publicly elected commission.

3 Section 3. [NEW MATERIAL] DEFINITIONS. -- As used in the
4 County Health Commission Act:

5 A. "commission" means a county health commission
6 created pursuant to the County Health Commission Act;

7 B. "county hospital" means a hospital owned by a
8 county; and

9 C. "county health commission hospital" means a
10 hospital, the ownership and responsibility for operation of
11 which have been transferred from a county to a county health
12 commission.

13 Section 4. [NEW MATERIAL] CREATION OF COMMISSION. -- The
14 board of county commissioners of a county in which there is a
15 county hospital:

16 A. may create a county health commission by the
17 adoption of a resolution creating the commission and calling for
18 an election of the members of the commission; or

19 B. shall create a county health commission by the
20 adoption of a resolution creating the commission and calling for
21 an election of the members of the commission when a petition
22 requesting the action is presented to the board of county
23 commissioners. The number of signatures required on the
24 petition shall be at least five percent of the number of votes
25 cast for governor in the county in the last preceding

. 115110.4

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1 gubernatorial election.

2 Section 5. [NEW MATERIAL] MEMBERSHIP OF COMMISSION--
3 ELECTION OF MEMBERS--TRANSFER OF HOSPITAL. --

4 A. An election of the county health commission shall
5 be held within ninety days of the date of passage of the
6 resolution by the board of county commissioners. Elections
7 shall be conducted in the manner provided in the Election Code
8 for the conduct of special elections.

9 B. Election districts for the commission shall be
10 identical to those districts designated for elections of the
11 board of county commissioners. Two county health commissioners
12 shall be elected from each district by the voters of the
13 district. A commissioner shall be a resident of the district
14 from which he is elected. To provide for staggered terms, one
15 commissioner from each district shall have an initial term of
16 two years, and the other commissioner from the district shall
17 have an initial term of four years. The commissioners shall
18 draw lots to determine the allocation of the initial terms.
19 Thereafter, commissioners shall be elected for terms of four
20 years. A vacancy on the commission shall be filled by
21 appointment by the board of county commissioners for the
22 remainder of the unexpired term.

23 C. Within ten days after the results of the election
24 are certified, the newly elected commission shall meet and
25 organize itself.

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1 D. Within thirty days after the results of the
2 election are certified, the county shall transfer ownership of
3 the county hospital to the commission. The commission shall
4 thereafter own the hospital and be responsible for the
5 operations of the hospital; provided that a county health
6 commission hospital may be operated by another party pursuant to
7 a lease or management contract with the commission.

8 Section 6. [NEW MATERIAL] POWERS AND DUTIES OF
9 COMMISSION. --

10 A. A county health commission shall operate the
11 hospital that has been transferred to its control as a public
12 hospital for the benefit of the residents of the county in which
13 it is located.

14 B. A commission shall have all powers necessary and
15 appropriate to carry out and effectuate its public purposes,
16 including the following powers:

17 (1) to adopt, amend and repeal bylaws for the
18 administration and regulation of the affairs of the commission;

19 (2) to sue and be sued;

20 (3) to purchase, lease, receive, acquire, own,
21 hold, use and otherwise deal in and with real property or
22 personal property;

23 (4) to sell, convey, lease, pledge, exchange,
24 transfer and otherwise dispose of all or any part of any of its
25 assets and properties for such consideration upon such terms and

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1 conditions as the commission shall determine;

2 (5) to make contracts, incur liabilities and
3 borrow money at such rates of interest as the commission may
4 determine;

5 (6) to make and execute contracts and all other
6 instruments necessary or convenient in the exercise of its
7 powers and functions;

8 (7) to receive, administer, hold and use all
9 funds made available to it from any source;

10 (8) to apply for and accept gifts or grants of
11 property, funds, services or aid in any form from the United
12 States, a unit of government or a person;

13 (9) to invest and reinvest its funds;

14 (10) to conduct its activities, carry out its
15 operations, have offices and facilities and exercise the powers
16 granted by the County Health Commission Act;

17 (11) to employ such officers and employees as
18 it deems necessary, set their compensation and describe their
19 duties;

20 (12) to procure insurance against any loss in
21 connection with its operations, property and other assets;

22 (13) to employ advisors, consultants, agents
23 and employees as may be required in its judgment and to fix and
24 pay compensation; and

25 (14) to do all things authorized by law not

. 115110.4

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1 inconsistent with the provisions of the County Health Commission
2 Act.

3 Section 7. [NEW MATERIAL] DISSOLUTION.--In the event of
4 dissolution of a county health commission, all rights and
5 properties of the commission shall be transferred by action of
6 the commission, or in the absence of that action, automatically
7 by operation of law, to the board of county commissioners,
8 subject to the rights of any bondholders, lienholders or
9 creditors of the commission.

10 Section 8. A new section of the Hospital Funding Act,
11 Section 4-48B-7.1 NMSA 1978, is enacted to read:

12 "4-48B-7.1. [NEW MATERIAL] POWER TO TRANSFER HOSPITAL TO
13 COUNTY HEALTH COMMISSION.--All counties shall have the power to
14 transfer a county hospital to a commission created pursuant to
15 the County Health Commission Act."

16 Section 9. Section 10-15-1 NMSA 1978 (being Laws 1974,
17 Chapter 91, Section 1, as amended) is amended to read:

18 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
19 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

20 A. In recognition of the fact that a representative
21 government is dependent upon an informed electorate, it is
22 declared to be public policy of this state that all persons are
23 entitled to the greatest possible information regarding the
24 affairs of government and the official acts of those officers
25 and employees who represent them. The formation of public

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1 policy or the conduct of business by vote shall not be conducted
2 in closed meeting. All meetings of any public body except the
3 legislature and the courts shall be public meetings, and all
4 persons so desiring shall be permitted to attend and listen to
5 the deliberations and proceedings. Reasonable efforts shall be
6 made to accommodate the use of audio and video recording
7 devices.

8 B. All meetings of a quorum of members of any board,
9 commission, administrative adjudicatory body or other
10 policymaking body of any state agency, any agency or authority
11 of any county, municipality, district or any political
12 subdivision, held for the purpose of formulating public policy,
13 including the development of personnel policy, rules,
14 regulations or ordinances, discussing public business or for the
15 purpose of taking any action within the authority of or the
16 delegated authority of any board, commission or other
17 policymaking body are declared to be public meetings open to the
18 public at all times, except as otherwise provided in the
19 constitution of New Mexico or the Open Meetings Act. No public
20 meeting once convened that is otherwise required to be open
21 pursuant to the Open Meetings Act shall be closed or dissolved
22 into small groups or committees for the purpose of permitting
23 the closing of the meeting.

24 C. If otherwise allowed by law or rule of the public
25 body, a member of a public body may participate in a meeting of

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1 the public body by means of a conference telephone or other
2 similar communications equipment when it is otherwise difficult
3 or impossible for the member to attend the meeting in person,
4 provided that each member participating by conference telephone
5 can be identified when speaking, all participants are able to
6 hear each other at the same time and members of the public
7 attending the meeting are able to hear any member of the public
8 body who speaks during the meeting.

9 D. Any meetings at which the discussion or adoption
10 of any proposed resolution, rule, regulation or formal action
11 occurs and at which a majority or quorum of the body is in
12 attendance, and any closed meetings, shall be held only after
13 reasonable notice to the public. The affected body shall
14 determine at least annually in a public meeting what notice for
15 a public meeting is reasonable when applied to that body. That
16 notice shall include broadcast stations licensed by the federal
17 communications commission and newspapers of general circulation
18 that have provided a written request for such notice.

19 E. A public body may recess and reconvene a meeting
20 to a day subsequent to that stated in the meeting notice if,
21 prior to recessing, the public body specifies the date, time and
22 place for continuation of the meeting, and, immediately
23 following the recessed meeting, posts notice of the date, time
24 and place for the reconvened meeting on or near the door of the
25 place where the original meeting was held and in at least one

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1 other location appropriate to provide public notice of the
2 continuation of the meeting. Only matters appearing on the
3 agenda of the original meeting may be discussed at the
4 reconvened meeting.

5 F. Meeting notices shall include an agenda
6 containing a list of specific items of business to be discussed
7 or transacted at the meeting or information on how the public
8 may obtain a copy of such an agenda. Except in the case of an
9 emergency, the agenda shall be available to the public at least
10 twenty-four hours prior to the meeting. Except for emergency
11 matters, a public body shall take action only on items appearing
12 on the agenda. For purposes of this subsection, an "emergency"
13 refers to unforeseen circumstances that, if not addressed
14 immediately by the public body, will likely result in injury or
15 damage to persons or property or substantial financial loss to
16 the public body.

17 G. The board, commission or other policymaking body
18 shall keep written minutes of all its meetings. The minutes
19 shall include at a minimum the date, time and place of the
20 meeting, the names of members in attendance and those absent,
21 the substance of the proposals considered and a record of any
22 decisions and votes taken that show how each member voted. All
23 minutes are open to public inspection. Draft minutes shall be
24 prepared within ten working days after the meeting and shall be
25 approved, amended or disapproved at the next meeting where a

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1 quorum is present. Minutes shall not become official until
2 approved by the policymaking body.

3 H. The provisions of Subsections A, B and G of this
4 section do not apply to:

5 (1) meetings pertaining to issuance,
6 suspension, renewal or revocation of a license, except that a
7 hearing at which evidence is offered or rebutted shall be open.
8 All final actions on the issuance, suspension, renewal or
9 revocation of a license shall be taken at an open meeting;

10 (2) limited personnel matters; provided that
11 for purposes of the Open Meetings Act, "limited personnel
12 matters" means the discussion of hiring, promotion, demotion,
13 dismissal, assignment or resignation of or the investigation or
14 consideration of complaints or charges against any individual
15 public employee; provided further that this subsection is not to
16 be construed as to exempt final actions on personnel from being
17 taken at open public meetings, nor does it preclude an aggrieved
18 public employee from demanding a public hearing. Judicial
19 candidates interviewed by any commission shall have the right to
20 demand an open interview;

21 (3) deliberations by a public body in
22 connection with an administrative adjudicatory proceeding. For
23 purposes of this paragraph, an "administrative adjudicatory
24 proceeding" means a proceeding brought by or against a person
25 before a public body in which individual legal rights, duties or

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1 privileges are required by law to be determined by the public
2 body after an opportunity for a trial-type hearing. Except as
3 otherwise provided in this section, the actual administrative
4 adjudicatory proceeding at which evidence is offered or rebutted
5 and any final action taken as a result of the proceeding shall
6 occur in an open meeting;

7 (4) the discussion of personally identifiable
8 information about any individual student, unless the student,
9 his parent or guardian requests otherwise;

10 (5) meetings for the discussion of bargaining
11 strategy preliminary to collective bargaining negotiations
12 between the policymaking body and a bargaining unit representing
13 the employees of that policymaking body and collective
14 bargaining sessions at which the policymaking body and the
15 representatives of the collective bargaining unit are present;

16 (6) that portion of meetings at which a
17 decision concerning purchases in an amount exceeding two
18 thousand five hundred dollars (\$2,500) that can be made only
19 from one source and that portion of meetings at which the
20 contents of competitive sealed proposals solicited pursuant to
21 the Procurement Code are discussed during the contract
22 negotiation process. The actual approval of purchase of the
23 item or final action regarding the selection of a contractor
24 shall be made in an open meeting;

25 (7) meetings subject to the attorney-client

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1 privilege pertaining to threatened or pending litigation in
2 which the public body is or may become a participant;

3 (8) meetings for the discussion of the
4 purchase, acquisition or disposal of real property or water
5 rights by the public body; and

6 (9) those portions of meetings of committees or
7 boards of public hospitals [~~that receive less than fifty percent~~
8 ~~of their operating budget from direct public funds and~~
9 ~~appropriations~~] or county health commissions where strategic and
10 long-range business plans are discussed. For purposes of this
11 paragraph, "strategic and long-range business plans" includes
12 all matters involving proprietary information the disclosure of
13 which would be likely to impede the ability of the hospital to
14 compete in the health care market; provided that discussion of
15 possible sale of a public hospital or county health commission
16 hospital or its assets to another entity is not within the
17 exception provided by this paragraph.

18 I. If any meeting is closed pursuant to the
19 exclusions contained in Subsection H of this section, the
20 closure:

21 (1) if made in an open meeting, shall be
22 approved by a majority vote of a quorum of the policymaking
23 body; the authority for the closure and the subject to be
24 discussed shall be stated with reasonable specificity in the
25 motion calling for the vote on a closed meeting; the vote shall

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1 be taken in an open meeting; and the vote of each individual
2 member shall be recorded in the minutes. Only those subjects
3 announced or voted upon prior to closure by the policymaking
4 body may be discussed in a closed meeting; and

5 (2) if called for when the policymaking body is
6 not in an open meeting, shall not be held until public notice,
7 appropriate under the circumstances, stating the specific
8 provision of the law authorizing the closed meeting and stating
9 with reasonable specificity the subject to be discussed is given
10 to the members and to the general public.

11 J. Following completion of any closed meeting, the
12 minutes of the open meeting that was closed or the minutes of
13 the next open meeting if the closed meeting was separately
14 scheduled shall state that the matters discussed in the closed
15 meeting were limited only to those specified in the motion for
16 closure or in the notice of the separate closed meeting. This
17 statement shall be approved by the public body under Subsection
18 G of this section as part of the minutes."

19 Section 10. Section 13-1-98 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 71, as amended) is amended to read:

21 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. -- The
22 provisions of the Procurement Code shall not apply to:

23 A. procurement of items of tangible personal
24 property or services by a state agency or a local public body
25 from a state agency, a local public body or external procurement

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1 unit except as otherwise provided in Sections 13-1-135 through
2 13-1-137 NMSA 1978;

3 B. procurement of tangible personal property or
4 services for the governor's mansion and grounds;

5 C. printing and duplicating contracts involving
6 materials which are required to be filed in connection with
7 proceedings before administrative agencies or state or federal
8 courts;

9 D. purchases of publicly provided or publicly
10 regulated gas, electricity, water, sewer and refuse collection
11 services;

12 E. purchases of books and periodicals from the
13 publishers or copyright holders thereof;

14 F. travel or shipping by common carrier or by
15 private conveyance or to meals and lodging;

16 G. purchase of livestock at auction rings or to the
17 procurement of animals to be used for research and
18 experimentation or exhibit;

19 H. contracts with businesses for public school
20 transportation services;

21 I. procurement of tangible personal property or
22 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
23 by the corrections industries division of the corrections
24 department pursuant to regulations adopted by the corrections
25 [~~industries~~] commission, which shall be reviewed by the

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1 purchasing division of the general services department prior to
2 adoption;

3 J. minor purchases consisting of magazine
4 subscriptions, conference registration fees and other similar
5 purchases where prepayments are required;

6 K. municipalities having adopted home rule charters
7 and having enacted their own purchasing ordinances;

8 L. the issuance, sale and delivery of public
9 securities pursuant to the applicable authorizing statute, with
10 the exception of bond attorneys and general financial
11 consultants;

12 M contracts entered into by a local public body
13 with a private independent contractor for the operation, or
14 provision and operation, of a jail pursuant to Sections 33-3-26
15 and 33-3-27 NMSA 1978;

16 N. contracts for maintenance of grounds and
17 facilities at highway rest stops and other employment
18 opportunities, excluding those intended for the direct care and
19 support of persons with handicaps, entered into by state
20 agencies with private, nonprofit, independent contractors who
21 provide services to persons with handicaps;

22 O. contracts and expenditures for services to be
23 paid or compensated by money or other property transferred to
24 New Mexico law enforcement agencies by the United States
25 department of justice drug enforcement administration;

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1 P. contracts for retirement and other benefits
2 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978; [~~and~~]

3 Q. contracts with professional entertainers; and

4 R. procurement of items of tangible personal
5 property or services by a hospital owned and operated by a
6 county health commission pursuant to purchasing regulations
7 adopted by that commission. "

8 Section 11. Section 14-2-1 NMSA 1978 (being Laws 1947,
9 Chapter 130, Section 1, as amended) is amended to read:

10 "14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--

11 Every person has a right to inspect any public records of this
12 state except:

13 A. records pertaining to physical or mental
14 examinations and medical treatment of persons confined to any
15 institution;

16 B. letters of reference concerning employment,
17 licensing or permits;

18 C. letters or memorandums which are matters of
19 opinion in personnel files or students' cumulative files;

20 D. law enforcement records that reveal confidential
21 sources, methods, information or individuals accused but not
22 charged with a crime. Law enforcement records include evidence
23 in any form received or compiled in connection with any criminal
24 investigation or prosecution by any law enforcement or
25 prosecuting agency, including inactive matters or closed

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1 investigations to the extent that they contain the information
2 listed above;

3 E. as provided by the Confidential Materials Act;
4 [and]

5 F. records of a county health commission or a county
6 health commission hospital if the records include proprietary
7 information, the disclosure of which would be likely to impede
8 the ability of the hospital to compete in the health care
9 market; and

10 [F.] G. as otherwise provided by law. "

11 Section 12. EMERGENCY. --It is necessary for the public
12 peace, health and safety that this act take effect immediately.

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
3
4

5 March 7, 1997
6

7 Mr. President:
8

9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
10 referred
11

12 SENATE BILL 918
13

14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that
16

17 SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
18 SENATE BILL 918
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20 DO PASS.
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22 Respectfully submitted,
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Shannon Robinson, Chairman

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Boitano, Adair, Feldman, Vernon

Absent: None

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SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 918

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO HEALTH; ENACTING THE COUNTY HEALTH COMMISSION ACT;
ENACTING A NEW SECTION OF THE HOSPITAL FUNDING ACT; AMENDING
CERTAIN SECTIONS OF THE NMSA 1978 PERTAINING TO OPEN MEETINGS,
PROCUREMENT AND PUBLIC RECORDS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through
8 of this act may be cited as the "County Health Commission
Act".

Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the
County Health Commission Act is to permit the transfer of
ownership of a county hospital to a county health commission,
thereby enhancing the ability of the hospital to compete in the
competitive and rapidly changing health care marketplace, while
ensuring that the hospital maintains its primary purpose of

providing health care for the benefit of the citizens of the county through the requirement of a publicly elected commission.

Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the County Health Commission Act:

A. "commission" means a county health commission created pursuant to the County Health Commission Act;

B. "county" means a class B county having a population of more than fifty thousand but less than fifty-five thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1996 property tax year of more than four hundred fifty million dollars (\$450,000,000) but less than five hundred million dollars (\$500,000,000);

C. "county hospital" means a hospital owned by a county; and

D. "county health commission hospital" means a public hospital, the ownership and responsibility for operation of which have been transferred from a county to a county health commission.

Section 4. [NEW MATERIAL] CREATION OF COMMISSION. --The board of county commissioners of a county in which there is a county hospital:

A. may create a county health commission by the adoption of a resolution creating the commission; or

B. may call for an election on the question of creating a county health commission. Such an election shall be required upon presentation to the board of county commissioners of a petition signed by registered electors of the county

1 requesting an election on the question. The number of signatures
2 required on the petition shall be at least five percent of the
3 number of votes cast for governor in the county in the last
4 preceding gubernatorial election. An election pursuant to this
5 subsection shall be conducted in the manner provided in the
6 Election Code for the conduct of special elections. If the
7 election is held as the result of presentation of a petition to the
8 board of county commissioners, the election shall be held within
9 forty-five days of the receipt of the petition.

10 Section 5. [NEW MATERIAL] MEMBERSHIP OF COMMISSION-- ELECTION
11 OF MEMBERS-- TRANSFER OF HOSPITAL. --

12 A. The initial election of the county health commission
13 shall be held within sixty days of the adoption by the board of
14 county commissioners of a resolution creating a county health
15 commission, or of an election pursuant to Section 4 of the County
16 Health Commission Act in which a majority of the voters voted in
17 favor of creating a county health commission. The election shall
18 be conducted in the manner provided in the Election Code for the
19 conduct of special elections.

20 B. Election districts for the commission shall be
21 identical to those districts designated for elections of the board
22 of county commissioners. Two county health commissioners shall be
23 elected from each district by the voters of the district. A
24 commissioner shall be a resident of the district from which he is
25 elected. Commissioners elected in the initial election shall serve

1 until the next general election. Thereafter, elections for the
2 commission shall be conducted at general elections.

3 C. At the first general election in which there is an
4 election for the county health commission, commissioners shall be
5 elected for staggered terms. One commissioner from each district
6 shall be elected to a term of four years, and the other
7 commissioner from the district shall be elected to a term of two
8 years. The commissioner receiving the highest vote total shall
9 have the four-year term. Thereafter, commissioners shall be
10 elected for terms of four years. A vacancy on the commission shall
11 be filled by appointment by the board of county commissioners for
12 the remainder of the unexpired term.

13 D. Within ten days after the results of the election are
14 certified, the newly elected commission shall meet and organize
15 itself.

16 E. Within thirty days after the results of the election
17 are certified, the county shall transfer ownership of the county
18 hospital to the commission. The commission shall thereafter own
19 the hospital, which shall remain a public hospital. The county
20 health commission shall be responsible for the operations of the
21 hospital; provided that a county health commission hospital may be
22 operated by another party pursuant to a lease or management
23 contract with the commission.

24 Section 6. [NEW MATERIAL] POWERS AND DUTIES OF COMMISSION. --

25 A. A county health commission shall operate the hospital

SPAC/SB 918

1 that has been transferred to its control as a public hospital for
2 the benefit of the residents of the county in which it is located.

3 B. A commission shall have all powers necessary and
4 appropriate to carry out and effectuate its public purposes,
5 including the following powers:

6 (1) to adopt, amend and repeal bylaws for the
7 administration and regulation of the affairs of the commission;

8 (2) to sue and be sued;

9 (3) to purchase, lease, receive, acquire, own, hold,
10 use and otherwise deal in and with real property or personal
11 property;

12 (4) to sell, convey, lease, pledge, exchange,
13 transfer and otherwise dispose of all or any part of any of its
14 assets and properties for such consideration upon such terms and
15 conditions as the commission shall determine;

16 (5) to make contracts, incur liabilities and borrow
17 money at such rates of interest as the commission may determine;

18 (6) to make and execute contracts and all other
19 instruments necessary or convenient in the exercise of its powers
20 and functions;

21 (7) to receive, administer, hold and use all funds
22 made available to it from any source;

23 (8) to apply for and accept gifts or grants of
24 property, funds, services or aid in any form from the United
25 States, a unit of government or a person;

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1 (9) to invest and reinvest its funds;
2 (10) to conduct its activities, carry out its
3 operations, have offices and facilities and exercise the powers
4 granted by the County Health Commission Act;

5 (11) to employ such officers and employees as it
6 deems necessary, set their compensation and describe their duties;

7 (12) to procure insurance against any loss in
8 connection with its operations, property and other assets;

9 (13) to employ advisors, consultants, agents and
10 employees as may be required in its judgment and to fix and pay
11 compensation; and

12 (14) to do all things authorized by law not
13 inconsistent with the provisions of the County Health Commission
14 Act.

15 Section 7. [NEW MATERIAL] HOSPITAL REVENUE BONDS. --

16 A. A county health commission may issue hospital revenue
17 bonds pursuant to the County Health Commission Act for the purpose
18 of constructing, purchasing, remodeling, equipping or re-equipping
19 a county health commission hospital.

20 B. The county health commission issuing the hospital
21 revenue bonds pursuant to the County Health Commission Act may
22 pledge irrevocably all or a portion of the revenues derived from
23 the operation of the county health commission hospital and revenues
24 derived from the leasing or other contractual arrangement for the
25 operation of a county health commission hospital for the payment of

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1 principal and interest on the revenue bonds.

2 C. At a regular or special meeting called for the purpose
3 of issuing revenue bonds as authorized pursuant to the County
4 Health Commission Act the county health commission may adopt a
5 resolution that:

6 (1) declares the necessity for issuing revenue
7 bonds;

8 (2) authorizes the issuance of revenue bonds by an
9 affirmative vote of a majority of the county health commission; and

10 (3) designates the source of the pledged revenues.

11 D. Hospital revenue bonds:

12 (1) may have interest, appreciated principal value
13 or any part thereof payable at intervals or at maturity as may be
14 determined by the county health commission;

15 (2) may be subject to a prior redemption at the
16 option of the county health commission at such time and upon such
17 terms and conditions, with or without the payment of a premium, as
18 may be provided by resolution of the county health commission;

19 (3) may mature at any time not exceeding thirty
20 years after the date of issuance;

21 (4) may be serial in form and maturity or may
22 consist of one bond payable at one time or in installments or may
23 be in any other form as may be provided in the resolution
24 authorizing the bonds;

25 (5) shall be sold for cash at above or below par and

1 at a price that results in a net effective interest rate which does
2 not exceed the maximum permitted by the Public Securities Act; and

3 (6) may be sold at a public or private sale.

4 E. Hospital revenue bonds issued under the authority of
5 the County Health Commission Act shall not be the general
6 obligations of the county and shall be payable only from the proper
7 pledged revenues, and each bond shall state that it is payable
8 solely from the proper pledged revenues and that the bondholders
9 may not look to any other fund for the payment of the principal and
10 interest on the bonds.

11 F. Hospital revenue bonds issued under authority of the
12 County Health Commission Act and the income from the bonds shall be
13 exempt from all taxation by the state or any political subdivision
14 of the state.

15 G. It is unlawful to divert, use or expend any money
16 received from the issuance of hospital revenue bonds for any
17 purpose other than the purpose for which the bonds were issued.

18 Section 8. [NEW MATERIAL] SALE OR DISSOLUTION. --In the event
19 of sale of a county health commission hospital, all proceeds from
20 the sale of the hospital shall be transferred to the board of
21 county commissioners subject to the rights of any bondholders,
22 lienholders or creditors of the commission. In the event of
23 dissolution of a county health commission, all rights and
24 properties of the commission shall be transferred by action of the
25 commission, or in the absence of that action, automatically by

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1 operation of law, to the board of county commissioners, subject to
2 the rights of any bondholders, lienholders or creditors of the
3 commission.

4 Section 9. A new section of the Hospital Funding Act, Section
5 4-48B-7.1 NMSA 1978, is enacted to read:

6 "4-48B-7.1. [NEW MATERIAL] POWER TO TRANSFER HOSPITAL TO
7 COUNTY HEALTH COMMISSION. --All counties shall have the power to
8 transfer a county hospital to a commission created pursuant to the
9 County Health Commission Act. "

10 Section 10. Section 10-15-1 NMSA 1978 (being Laws 1974,
11 Chapter 91, Section 1, as amended) is amended to read:

12 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
13 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS. --

14 A. In recognition of the fact that a representative
15 government is dependent upon an informed electorate, it is declared
16 to be public policy of this state that all persons are entitled to
17 the greatest possible information regarding the affairs of
18 government and the official acts of those officers and employees
19 who represent them. The formation of public policy or the conduct
20 of business by vote shall not be conducted in closed meeting. All
21 meetings of any public body except the legislature and the courts
22 shall be public meetings, and all persons so desiring shall be
23 permitted to attend and listen to the deliberations and
24 proceedings. Reasonable efforts shall be made to accommodate the
25 use of audio and video recording devices.

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1 B. All meetings of a quorum of members of any board,
2 commission, administrative adjudicatory body or other policymaking
3 body of any state agency, any agency or authority of any county,
4 municipality, district or any political subdivision, held for the
5 purpose of formulating public policy, including the development of
6 personnel policy, rules, regulations or ordinances, discussing
7 public business or for the purpose of taking any action within the
8 authority of or the delegated authority of any board, commission or
9 other policymaking body are declared to be public meetings open to
10 the public at all times, except as otherwise provided in the
11 constitution of New Mexico or the Open Meetings Act. No public
12 meeting once convened that is otherwise required to be open
13 pursuant to the Open Meetings Act shall be closed or dissolved into
14 small groups or committees for the purpose of permitting the
15 closing of the meeting.

16 C. If otherwise allowed by law or rule of the public
17 body, a member of a public body may participate in a meeting of the
18 public body by means of a conference telephone or other similar
19 communications equipment when it is otherwise difficult or
20 impossible for the member to attend the meeting in person, provided
21 that each member participating by conference telephone can be
22 identified when speaking, all participants are able to hear each
23 other at the same time and members of the public attending the
24 meeting are able to hear any member of the public body who speaks
25 during the meeting.

1 D. Any meetings at which the discussion or adoption of
2 any proposed resolution, rule, regulation or formal action occurs
3 and at which a majority or quorum of the body is in attendance, and
4 any closed meetings, shall be held only after reasonable notice to
5 the public. The affected body shall determine at least annually in
6 a public meeting what notice for a public meeting is reasonable
7 when applied to that body. That notice shall include broadcast
8 stations licensed by the federal communications commission and
9 newspapers of general circulation that have provided a written
10 request for such notice.

11 E. A public body may recess and reconvene a meeting to a
12 day subsequent to that stated in the meeting notice if, prior to
13 recessing, the public body specifies the date, time and place for
14 continuation of the meeting, and, immediately following the
15 recessed meeting, posts notice of the date, time and place for the
16 reconvened meeting on or near the door of the place where the
17 original meeting was held and in at least one other location
18 appropriate to provide public notice of the continuation of the
19 meeting. Only matters appearing on the agenda of the original
20 meeting may be discussed at the reconvened meeting.

21 F. Meeting notices shall include an agenda containing a
22 list of specific items of business to be discussed or transacted at
23 the meeting or information on how the public may obtain a copy of
24 such an agenda. Except in the case of an emergency, the agenda
25 shall be available to the public at least twenty-four hours prior

1 to the meeting. Except for emergency matters, a public body shall
 2 take action only on items appearing on the agenda. For purposes of
 3 this subsection, an "emergency" refers to unforeseen circumstances
 4 that, if not addressed immediately by the public body, will likely
 5 result in injury or damage to persons or property or substantial
 6 financial loss to the public body.

7 G. The board, commission or other policymaking body shall
 8 keep written minutes of all its meetings. The minutes shall
 9 include at a minimum the date, time and place of the meeting, the
 10 names of members in attendance and those absent, the substance of
 11 the proposals considered and a record of any decisions and votes
 12 taken that show how each member voted. All minutes are open to
 13 public inspection. Draft minutes shall be prepared within ten
 14 working days after the meeting and shall be approved, amended or
 15 disapproved at the next meeting where a quorum is present. Minutes
 16 shall not become official until approved by the policymaking body.

17 H. The provisions of Subsections A, B and G of this
 18 section do not apply to:

19 (1) meetings pertaining to issuance, suspension,
 20 renewal or revocation of a license, except that a hearing at which
 21 evidence is offered or rebutted shall be open. All final actions
 22 on the issuance, suspension, renewal or revocation of a license
 23 shall be taken at an open meeting;

24 (2) limited personnel matters; provided that for
 25 purposes of the Open Meetings Act, "limited personnel matters"

1 means the discussion of hiring, promotion, demotion, dismissal,
2 assignment or resignation of or the investigation or consideration
3 of complaints or charges against any individual public employee;
4 provided further that this subsection is not to be construed as to
5 exempt final actions on personnel from being taken at open public
6 meetings, nor does it preclude an aggrieved public employee from
7 demanding a public hearing. Judicial candidates interviewed by any
8 commission shall have the right to demand an open interview;

9 (3) deliberations by a public body in connection
10 with an administrative adjudicatory proceeding. For purposes of
11 this paragraph, an "administrative adjudicatory proceeding" means a
12 proceeding brought by or against a person before a public body in
13 which individual legal rights, duties or privileges are required by
14 law to be determined by the public body after an opportunity for a
15 trial-type hearing. Except as otherwise provided in this section,
16 the actual administrative adjudicatory proceeding at which evidence
17 is offered or rebutted and any final action taken as a result of
18 the proceeding shall occur in an open meeting;

19 (4) the discussion of personally identifiable
20 information about any individual student, unless the student, his
21 parent or guardian requests otherwise;

22 (5) meetings for the discussion of bargaining
23 strategy preliminary to collective bargaining negotiations between
24 the policymaking body and a bargaining unit representing the
25 employees of that policymaking body and collective bargaining

1 sessions at which the policymaking body and the representatives of
2 the collective bargaining unit are present;

3 (6) that portion of meetings at which a decision
4 concerning purchases in an amount exceeding two thousand five
5 hundred dollars (\$2,500) that can be made only from one source and
6 that portion of meetings at which the contents of competitive
7 sealed proposals solicited pursuant to the Procurement Code are
8 discussed during the contract negotiation process. The actual
9 approval of purchase of the item or final action regarding the
10 selection of a contractor shall be made in an open meeting;

11 (7) meetings subject to the attorney-client
12 privilege pertaining to threatened or pending litigation in which
13 the public body is or may become a participant;

14 (8) meetings for the discussion of the purchase,
15 acquisition or disposal of real property or water rights by the
16 public body; and

17 (9) those portions of meetings of committees or
18 boards of public hospitals [~~that receive less than fifty percent of~~
19 ~~their operating budget from direct public funds and appropriations]~~
20 or county health commissions where strategic and long-range
21 business plans are discussed. For purposes of this paragraph,
22 "strategic and long-range business plans" includes all matters
23 involving proprietary information the disclosure of which would be
24 likely to impede the ability of the hospital to compete in the
25 health care market; provided that discussion of possible sale of a

1 public hospital or county health commission hospital or its assets
2 to another entity is not within the exception provided by this
3 paragraph.

4 I. If any meeting is closed pursuant to the exclusions
5 contained in Subsection H of this section, the closure:

6 (1) if made in an open meeting, shall be approved by
7 a majority vote of a quorum of the policymaking body; the authority
8 for the closure and the subject to be discussed shall be stated
9 with reasonable specificity in the motion calling for the vote on a
10 closed meeting; the vote shall be taken in an open meeting; and the
11 vote of each individual member shall be recorded in the minutes.

12 Only those subjects announced or voted upon prior to closure by the
13 policymaking body may be discussed in a closed meeting; and

14 (2) if called for when the policymaking body is not
15 in an open meeting, shall not be held until public notice,
16 appropriate under the circumstances, stating the specific provision
17 of the law authorizing the closed meeting and stating with
18 reasonable specificity the subject to be discussed is given to the
19 members and to the general public.

20 J. Following completion of any closed meeting, the
21 minutes of the open meeting that was closed or the minutes of the
22 next open meeting if the closed meeting was separately scheduled
23 shall state that the matters discussed in the closed meeting were
24 limited only to those specified in the motion for closure or in the
25 notice of the separate closed meeting. This statement shall be

1 approved by the public body under Subsection G of this section as
2 part of the minutes. "

3 Section 11. Section 13-1-98 NMSA 1978 (being Laws 1984,
4 Chapter 65, Section 71, as amended) is amended to read:

5 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. -- The
6 provisions of the Procurement Code shall not apply to:

7 A. procurement of items of tangible personal property or
8 services by a state agency or a local public body from a state
9 agency, a local public body or external procurement unit except as
10 otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

11 B. procurement of tangible personal property or services
12 for the governor's mansion and grounds;

13 C. printing and duplicating contracts involving materials
14 which are required to be filed in connection with proceedings
15 before administrative agencies or state or federal courts;

16 D. purchases of publicly provided or publicly regulated
17 gas, electricity, water, sewer and refuse collection services;

18 E. purchases of books and periodicals from the publishers
19 or copyright holders thereof;

20 F. travel or shipping by common carrier or by private
21 conveyance or to meals and lodging;

22 G. purchase of livestock at auction rings or to the
23 procurement of animals to be used for research and experimentation
24 or exhibit;

25 H. contracts with businesses for public school

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1 transportation services;

2 I. procurement of tangible personal property or services,
3 as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the
4 corrections industries division of the corrections department
5 pursuant to regulations adopted by the corrections [~~industries~~]
6 commission, which shall be reviewed by the purchasing division of
7 the general services department prior to adoption;

8 J. minor purchases consisting of magazine subscriptions,
9 conference registration fees and other similar purchases where
10 prepayments are required;

11 K. municipalities having adopted home rule charters and
12 having enacted their own purchasing ordinances;

13 L. the issuance, sale and delivery of public securities
14 pursuant to the applicable authorizing statute, with the exception
15 of bond attorneys and general financial consultants;

16 M contracts entered into by a local public body with a
17 private independent contractor for the operation, or provision and
18 operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA
19 1978;

20 N. contracts for maintenance of grounds and facilities at
21 highway rest stops and other employment opportunities, excluding
22 those intended for the direct care and support of persons with
23 handicaps, entered into by state agencies with private, nonprofit,
24 independent contractors who provide services to persons with
25 handi caps;

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1 0. contracts and expenditures for services to be paid or
2 compensated by money or other property transferred to New Mexico
3 law enforcement agencies by the United States department of justice
4 drug enforcement administration;

5 P. contracts for retirement and other benefits pursuant
6 to Sections 22-11-47 through 22-11-52 NMSA 1978; [~~and~~]

7 Q. contracts with professional entertainers; and

8 R. procurement of items of tangible personal property or
9 services by a hospital owned and operated by a county health
10 commission pursuant to purchasing regulations adopted by that
11 commission. "

12 Section 12. Section 14-2-1 NMSA 1978 (being Laws 1947,
13 Chapter 130, Section 1, as amended) is amended to read:

14 "14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--Every
15 person has a right to inspect any public records of this state
16 except:

17 A. records pertaining to physical or mental examinations
18 and medical treatment of persons confined to any institution;

19 B. letters of reference concerning employment, licensing
20 or permits;

21 C. letters or memorandums which are matters of opinion in
22 personnel files or students' cumulative files;

23 D. law enforcement records that reveal confidential
24 sources, methods, information or individuals accused but not
25 charged with a crime. Law enforcement records include evidence in

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1 any form received or compiled in connection with any criminal
2 investigation or prosecution by any law enforcement or prosecuting
3 agency, including inactive matters or closed investigations to the
4 extent that they contain the information listed above;

5 E. as provided by the Confidential Materials Act; [~~and~~]

6 F. records of a county health commission or a county
7 health commission hospital if the records include proprietary
8 information, the disclosure of which would be likely to impede the
9 ability of the hospital to compete in the health care market; and

10 [~~F.~~] G. as otherwise provided by law. "

11 Section 13. EMERGENCY. --It is necessary for the public peace,
12 health and safety that this act take effect immediately.

State of New Mexico House of Representatives

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FIRST SESSION, 1997

March 15, 1997

Mr. Speaker:

Your VOTERS AND ELECTIONS COMMITTEE, to whom has been referred

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 918

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. On page 1, line 11, after the second semicolon insert "ENACTING THE NONPROFIT HOSPITAL SALE ACT;".

2. On page 2, line 1, before "citizens" insert "sick and indigent".

3. On page 2, line 8, strike "fifty-five" and insert in lieu thereof "sixty".

4. On page 19, line 18, before "records" insert "those portions

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of".

5. On page 19, line 19, strike "if the records" and insert in lieu thereof "that".

6. On page 19, between lines 22 and 23, insert the following new sections:

"Section 13. [NEW MATERIAL] SHORT TITLE.--Sections 13 through 22 of this act may be cited as the "Nonprofit Hospital Sale Act".

Section 14. [NEW MATERIAL] DEFINITIONS.--As used in the Nonprofit Hospital Sale Act:

A. "acquire" or "acquisition" means the acquiring by a person of an interest in a hospital, whether by purchase, merger, lease, gift or otherwise, that results in a change of ownership or control of twenty percent or greater or that results in the acquiring person holding a fifty percent or greater interest in the ownership or control of a hospital, but "acquisition" does not include the acquiring of an interest in a hospital owned by a nonprofit corporation if the transferee:

(1) is a nonprofit corporation having a substantially similar charitable health care purpose as the transferor; and

(2) will continue representation from the affected community on the local board;

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B. "department" means the department of health;

C. "hospital" means a general or acute care or specialty hospital licensed by the department;

D. "nonprofit corporation" means a person exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 or the state or a department, agency, institution or political subdivision of the state; and

E. "person" means an individual or other legal entity, not including the state or a department, agency, institution or political subdivision of the state.

Section 15. [NEW MATERIAL] ACQUISITIONS--APPLICATIONS--APPROVALS.--

A. No person shall acquire a hospital owned by a nonprofit corporation without first applying for and receiving the approval of the department and without first notifying the attorney general and, if applicable, receiving approval from the attorney general pursuant to the Nonprofit Hospital Sale Act.

B. Except as provided in Subsection C of this section, no person shall acquire a hospital owned by a person other than a nonprofit corporation without first applying for and receiving the approval of the department pursuant to the Nonprofit Hospital Sale Act unless the acquiring person is a nonprofit corporation.

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C. Approval of the department and the attorney general is not required for the acquisition of a hospital if the acquisition is a result of:

- (1) the lease of a county hospital;
- (2) the dissolution of a hospital district; or
- (3) the merger of hospital districts or governmental hospitals.

D. The acquisition application shall be submitted to the department and the attorney general on forms provided by the department and shall include the name of the seller, the name of the purchaser or other parties to the acquisition, the terms of the proposed agreement, the sale price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition based on the criteria set forth in Sections 7 and 8 of the Nonprofit Hospital Sale Act and all other related documents. A copy of the application and copies of all additional related materials shall be submitted to the department and to the attorney general at the same time. Applications and all related documents are public records.

E. A person not required to obtain approval for an acquisition shall notify the department and the attorney general at least thirty days before the acquisition. The notice shall briefly describe the impending acquisition, including any change in ownership

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of tangible and intangible assets.

Section 16. ~~[NEW MATERIAL]~~ APPLICATION-- CONTENTS-- TIME PERIODS-- APPROVALS OR DISAPPROVALS. --

A. Within ten days after receipt of an application, the department shall publish notice of the application in a newspaper of general circulation in the county where the hospital is located and shall notify by mail any person who has requested notice of the filing of applications. The notice shall state that an application has been received, state the names of the parties to the agreement, describe the contents of the application and state the date by which a person may submit written comments about the application to the department.

B. Within twenty days after receiving an application, the attorney general shall determine whether to review the application in accordance with Section 7 of the Nonprofit Hospital Sale Act and shall notify the applicant of his decision. If the attorney general reviews the application, he shall approve or disapprove the acquisition within sixty days.

C. Within sixty days after receiving an application, the department shall review the application in accordance with the standards set forth in the Nonprofit Hospital Sale Act and shall:

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(1) approve the acquisition, with or without any specific modifications; or

(2) disapprove the acquisition.

D. If during its review the department determines that the application is incomplete, it may return the application to the applicant or may request additions or changes to the application. All deadlines are suspended during the time an application is incomplete.

E. The department shall not make its decision subject to any condition not directly related to criteria enumerated in Section 8 of the Nonprofit Hospital Sale Act, and any condition or modification shall bear a direct and rational relationship to the application under review.

F. An affected person may appeal a final decision by the department pursuant to the Nonprofit Hospital Sale Act in the same manner as appeals related to the department's denial, suspension or revocation of a hospital license pursuant to Section 24-1-5 NMSA 1978.

Section 17. [NEW MATERIAL] PUBLIC HEARING. -- The department and the attorney general shall hold a public hearing in which any person may file written comments and exhibits or appear and make a statement. The department and the attorney general may subpoena additional information or witnesses, require and administer oaths,

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2 require sworn statements, take depositions and use related discovery
3 procedures for purposes of the hearing and at any time prior to
4 making a decision on the application. The hearing shall be held not
5 later than forty days after receipt of an application. The hearing
6 shall be held upon ten working days' notice, not including days the
7 application is deemed incomplete.

8 Section 18. [NEW MATERIAL] DECLARATORY JUDGMENT.--After the
9 attorney general approves or disapproves the acquisition, the
10 applicant or any person who has submitted comments pursuant to
11 Section 5 of the Nonprofit Hospital Sale Act, if the person has an
12 interest in the hospital being acquired or in another hospital that
13 has contracted with the acquirable hospital for the provision of
14 essential health services, may bring an action for declaratory
15 judgment for a determination that the acquisition is or is not in the
16 public interest as provided in Section 7 of that act.

17 Section 19. [NEW MATERIAL] ATTORNEY GENERAL--CRITERIA. --

18
19 A. The attorney general shall approve the application
20 unless he finds that the acquisition is not in the public interest.
21 An acquisition is not in the public interest unless appropriate steps
22 have been taken to safeguard the value of charitable assets and
23 ensure that any proceeds of the transaction are used for appropriate
24 charitable health care purposes as provided in Paragraph (8) of
25 Subsection B of this section.

B. In determining whether the acquisition meets the

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requirements of the Nonprofit Hospital Sale Act, the attorney general shall consider:

(1) whether the acquisition is permitted by the Nonprofit Corporation Act and other laws of New Mexico governing public procurement or nonprofit entities;

(2) whether the nonprofit hospital exercised due diligence in deciding to sell, selecting the purchaser and negotiating the terms and conditions of the sale;

(3) the procedures used by the seller in making its decision, including whether appropriate expert assistance was used;

(4) whether conflict of interest was disclosed, including conflicts of interest related to board members of, executives of and experts retained by the seller, purchaser or other parties to the acquisition;

(5) whether the seller will receive reasonable consideration and fair value for its assets. The attorney general may employ, at the seller's expense, reasonably necessary expert assistance in making this determination;

(6) whether public and charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the seller;

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(7) whether any management contract under the acquisition is for reasonable consideration and fair value;

(8) whether the sale proceeds will be used for appropriate public and charitable health care purposes consistent with the seller's original purpose or for the support and promotion of health care in the affected community and whether the proceeds will be controlled as public or charitable funds independent of the purchaser or parties to the acquisition; and

(9) whether a right of first refusal has been retained to repurchase the assets by a successor nonprofit corporation or foundation if the hospital is subsequently sold to, acquired by or merged with another entity.

Section 20. [NEW MATERIAL] DEPARTMENT CRITERIA. --

A. In determining whether the acquisition meets the requirements of the Nonprofit Hospital Sale Act, the department shall consider:

(1) whether sufficient safeguards are included to assure the affected community continued access to affordable and appropriate health care;

(2) whether the purchaser and parties to the acquisition have made a commitment to provide health care to the

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2 disadvantaged, the uninsured and the underinsured and to provide
3 benefits to the affected community to promote health care.
4 Activities and funding provided by the seller to provide such health
5 care may be considered in evaluating compliance with this paragraph;
6 and

7 (3) if health care providers will be offered the
8 opportunity to invest or own an interest in the purchaser or an
9 entity related to the purchaser, whether procedures or safeguards are
10 in place to avoid conflict of interest in patient referral and the
11 nature of the procedures or safeguards.

12 B. This section does not apply higher standards to
13 hospitals covered by the provisions of the Nonprofit Hospital Sale
14 Act than those applicable to hospitals not covered by the provisions
15 of that act.

16
17 Section 21. [NEW MATERIAL] ACQUISITION--FAILURE TO FULFILL
18 OBLIGATIONS--REVOCATION OF LICENSE.--If the department receives
19 information indicating that the acquiring person is not fulfilling
20 the commitment to the affected community pursuant to Section 7 of the
21 Nonprofit Hospital Sale Act, the department shall hold a hearing on
22 ten working days' notice to the affected parties. If after the
23 hearing the department determines that the information is true, it
24 may institute proceedings to revoke the license issued to the
25 purchaser.

Section 22. [NEW MATERIAL] LICENSURE--DENIAL, SUSPENSION OR

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REVOCATION. --

A. No license to operate a hospital shall be issued or renewed by the department and a license that has been issued shall be suspended or revoked if:

(1) there is an acquisition of a hospital without first having received the approval, if applicable, of the department pursuant to the Nonprofit Hospital Sale Act;

(2) there is an acquisition of a hospital without the approval of the attorney general if the attorney general determines to review the application pursuant to the Nonprofit Hospital Sale Act;

(3) there is an acquisition of a hospital and there is a judicial determination that the acquisition is not in the public interest; or

(4) the hospital is not fulfilling its commitment pursuant to Section 8 of the Nonprofit Hospital Sale Act.

B. Hearings and appeals of department actions pursuant to this section shall be taken in the same manner as provided for other hospital license suspensions or revocations in Section 24-1-5 NMSA 1978. "

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7. Renumber the succeeding section accordingly. ,

Respectfully submitted,

Edward C. Sandoval, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Lujan, Nicely, Sanchez

Absent: None

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Underscored material = new
[bracketed material] = delete